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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,397	01/02/2001	Lori Ann Wilson	67,500-353	7520

27305 7590 09/23/2004

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/751,397	Applicant(s) WILSON ET AL. 9	
	Examiner Lien T Tran	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,6-12,34 and 35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-12 and 34-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 1-3, 6-12, 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alderman in view of Nakamura et al (Production of waxy (amylose free) wheats) and the book "Wheat Chemistry and Technology).

Alderman discloses cooked- puffed waxy cereal food. The grains used are waxy varieties of the cereal grains such as corn, rice, sorghum, barley, millet etc... The whole grain may be processed in the form of whole kernels or fractions thereof such as grits. The grains are cooked and then oven puffed. The grains are formed into ready-to-eat cereal foods of the breakfast cereal type. The grains can be pearled. (See entire reference)

Alderman does not disclose the grain is waxy wheat and coating the grains with an edible coating.

Nakamura et al disclose the production of waxy wheats. (See abstract)

The book shows that the common wheat "Triticum aestivum" include both soft and hard wheat and the protein content of the soft and hard wheat ranges from 9-15%.

It would have been obvious to one skilled in the art at the time of the invention to use any waxy grains that are available. Nakamura et al show that waxy wheats are known. Thus, it would have been obvious to use waxy wheat to produce the waxy cooked cereal grains disclosed by Alderman. When waxy wheat is used, it is obvious the grains will have the allele and the amylose content claimed. Nakamura et al do not disclose the protein content of the wheat; however, they disclose common wheat is used. Common wheat includes both the soft and hard kind; as shown by the textbook, the protein ranges from 9-15%. Thus, the protein claimed is commonly found in wheat

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and would be expected to find in the wheat product of Nakamura et al because the making of the waxy variety does not alter the protein content. Furthermore, the specification does not disclose any step to alter the protein content of the wheat product; thus, the protein content is that commonly found in wheat product. It would have been obvious to put an edible coating such as sucrose, corn syrup solid on the grains to enhance the taste and flavor of the grains. This is well known in the cereal technology. Since the cereal product is puffed and it is a ready to eat cereal, the product is buoyant because cereal floats in liquid. The Alderman product is dried so it expect the product is storage stable because ready-to-eat cereal has shelf life exceeding one year.

In the RCE filed Sept. 2, 2004, applicant submits a 132 declaration to show that the claimed product is different from the Alderman product. The declaration is not found to be persuasive. Page 2 of the declaration states that the waxy wheat grains treated in accordance with Alderman process are not gelatinized throughout as seen by the presence of numerous white spots shown in figures 1 and 2. The declaration does not have evidence to show that the white spots are indicative of ungelatinization. The black and white pictures are very blurry and do not show clearly the white spots. The only thing that is seen is tiny white dots which are also present in figures 7-8 which are stated as the claimed product. Page 2 also states that the bran layer has come off as shown in figures 3-4, 5-6. The pictures in figures 3-4,5-6 are very blurry; it is not known what would be considered as the bran in the picture. It cannot be seen that the grains are full of fissures and that the outer bran layers are lost. Figures 5-6 look just like

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figures 11-12 which are stated as the claimed product. Also, the showing is not commensurate in scope with the claims because the product as cited in claim 1 does not contain any parameters on how the product is prepared. The statement concerning the cup weight and density is not an issue to be considered because the claims do not have any limitation on density. In conclusion, the pictures are not conclusive showing such that any conclusion can be drawn between the two products.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 21, 2004


LIEN TRAN
PRIMARY EXAMINER
